FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5926 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. A.N. Mulla for the petitioner.

None for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 19TH SEPTEMBER, 2005.

P.C.:-

The petitioner is original defendant 1 in Regular Civil Suit No.457 of 2000 filed in the court of Civil Judge, Senior Division, Karad, by respondent 1 who is his mother, for a declaration that Will dated 17/10/1991 executed by deceased Bapu Shikalgar in favour of the petitioner is illegal and not binding on others.

In that suit, the petitioner filed his written statement. It is the

petitioner's case that counter-claim to the written statement was filed in the court without the signature of respondent 1.

It appears that on 9/3/2005, respondent 1 through her advocate filed application (Ex-78), stating that she has been admitted in the Bombay Hospital and, therefore, she has not signed the counter-claim. Hence, it may be taken on file and a date be fixed for taking her signature. The petitioner then filed application (Ex-79) on 4/4/2005 stating that respondent 1 had filed the counter-claim without duly verifying it. It was contended in the application that respondent 1 through her advocate had tried to amend it which is contrary to law and, therefore, her request may be considered in this light. Respondent 1 filed her objection to it contending that she was old and was admitted in hospital at Bombay and the counter-claim has been filed with the permission of the court.

By the impugned order, the learned judge rejected the petitioner's application on the ground that respondent 1 is a very old woman and she was admitted in hospital. Her advocate had honestly prayed for filing written statement and, thereafter, obtained signatures on it and this shows her bonafides. This order is challenged in this writ petition.

I have heard Mr. Mulla, the learned counsel appearing for the petitioner. He stated that respondent 1 has been put up by the other brothers to file a suit. She did not want to file written statement to the counter-claim filed by the defendant. She has been forced by the brothers of the petitioner to do so. Hence, the learned judge should not have rejected the petitioner's application.

In my opinion, this is not a case where this court should interfere with the impugned order in its writ

jurisdiction. However, it will be open to the petitioner to agitate all contentions in the trial court. This court has not expressed any opinion on the merits of the case. Contentions of both sides are kept open. The petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)